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W5a**May 25, 2000****To:** Coastal Commissioners and Interested Persons

From: Peter Douglas, Executive Director
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Subject: Memorandum of Understanding (MOU) related to City of Watsonville Local Coastal Program Major Amendment Number 1-99.

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1. MOU Discussion**A. MOU Background**

At the March 16, 2000 hearing in Carmel, the Commission certified, with suggested modifications, City of Watsonville Local Coastal Program (LCP) Major Amendment Number 1-99. This amendment was designed to modify the City's LCP to allow for the Pajaro Valley Unified School District (PVUSD) to pursue a high school on property west of Highway One along Harkins Slough Road between Hanson and West Branch Struve Sloughs. Because of the concern that the LCP amendment would, among other things, inappropriately induce future growth in a predominantly agricultural and sensitive habitat region west of



the highway, the Commission adopted a range of suggested modifications. One of these suggested modifications included the requirement for adoption of a Memorandum of Understanding (MOU) designed to help address these concerns. Suggested Modification Number 11 adopted by the Commission on March 16, 2000 states as follows:

Mod 11. Memorandum of Understanding

Require adoption of a negotiated Memorandum of Understanding (MOU) to help ensure that the LCP amendment is not growth inducing. In the event that the high school project is abandoned, the MOU provides that the provisions of this LCP amendment shall likewise be abandoned and that the City shall subsequently submit a comprehensive LCP update for Commission review.

In order for the certification of all provisions of LCP Amendment 1-99 (as modified) to be final, a Memorandum of Understanding (MOU) intended to support growth restrictions and ESHA protections in the coastal zone (Exhibit Q) must be effective. As evidence, the City shall submit an executed MOU (as provided by Section 14 of the Memorandum) with all other approvals of the required LCP modifications within six months of Commission action on LCP Amendment 1-99. As provided in Section 1 of the MOU, all provisions of LCP Amendment 1-99 shall automatically be rescinded and decertified upon notice by PVUSD to the Executive Director of the Coastal Commission that it has irrevocably abandoned any project to construct a public school on the site (Area C). In this event, the City shall submit, within one year of PVUSD's notice of abandonment, a comprehensive update of the City's LCP for review and action by the Coastal Commission.

The primary intent of the MOU is to strictly limit future City of Watsonville annexations, and to strictly limit the provision of potable water and sewer services west of Highway One. The MOU also requires "right-to-farm" provisions to protect agricultural uses west of the Highway, and requires protection of environmentally sensitive habitat areas; for any school use, buffers and site design must adequately buffer habitat and agricultural resources to avoid disruption of these adjacent resources. In other words, the MOU is intended to implement many of the Commission's suggested modifications to add another layer of protection to coastal resources here. See MOU attached as Exhibit 1.

The City (by vote of the City Council on March 14, 2000) and the County (by vote of the Board of Supervisors on March 14, 2000) have agreed to execute the MOU reviewed by the Commission on March 16, 2000 (noted as "Exhibit Q: Memorandum of Understanding Regarding City of Watsonville LCP Amendment 1-99" in the adopted staff report; again see Exhibit 1). The Commission, who would be the third and last party to the MOU, is the only signatory that has not yet agreed to execute the MOU.

B. MOU Actions

The MOU requires specific actions for each party as follows:

For the City of Watsonville, this includes consideration of amendments to the LCP and the City's General Plan to: (1) provide a "right-to-farm" ordinance; (2) establish a one-foot wide utility



prohibition district along the western boundaries of Coastal Zone Areas A, B, and C; (3) not pursue annexations (other than Green Farm) west of Highway One; and (4) for the LCP only, policies and standards to ensure protection of agricultural and environmentally sensitive habitat lands, including adequate buffer provisions.

For Santa Cruz County, this includes consideration of amendments to the LCP and the County's General Plan to: (1) establish a one-foot wide utility prohibition district along the City of Watsonville boundaries west of Highway One; (2) limit the width of any improvements to Harkins Slough Road and encourage that all Harkins Slough Road improvements provide West Branch Struve Slough habitat connectivity; and (3) place a one-foot non-access strip around any wastewater or potable water utility easements granted to the City.

For the Commission, an agreement to hold a public hearing to consider approval of any LCP amendment(s) developed by the City and County pursuant to the MOU.

C. MOU Timing

Pursuant to Suggested Modification 11 adopted by the Commission on March 16, 2000, the MOU must be executed within 6 months of the Commission's action on LCP Amendment 1-99. This 6 month time frame was identified so as to correspond to the City's 6 month deadline for accepting the Commission's suggested modifications. Although the City has indicated that they intend to accept all of the Commission's suggested modifications, no specific date for this action has been identified by the City. The 6 months expires on September 16, 2000. However, this 6 month time frame may be extended for up to one year. The City has not yet requested such an extension.

2. MOU Procedural History Since March 16, 2000

This MOU item was previously the subject of a Coastal Commission hearing on April 10, 2000. At that time, the Commission raised a number of questions about both the MOU and the status of PVUSD action (as evidenced by District Superintendent Casey's March 31, 2000 memo to the PVUSD Board; see Exhibit 2) since the Commission's decision on LCP amendment 1-99 on March 16, 2000. At the April 10, 2000 hearing, the Commission postponed action on the MOU and asked that Staff return with clarification of MOU issues, and with a response from the District clarifying their post-hearing actions. Staff subsequently requested clarification from the District in a follow-up phone call and an April 21, 2000 letter to District Superintendent Casey (see Exhibit 3).¹ The MOU was then scheduled for the Commission's May 11, 2000 hearing in Santa Rosa. However, at the request of the City and the District, the MOU hearing was again postponed. The requested clarifications are now presented in the findings below.

3. MOU Questions Discussion

¹ Staff's letter was framed by the Commission's questions and direction at the April 10th MOU hearing.



Questions posed by the Commission at the April 10, 2000 hearing regarding the MOU were in relation to: (a) the agreement's statement regarding the EIR for the District's proposed high school; (b) the MOU's reference to the Harkins Slough Interchange project; (c) the MOU's supermajority vote requirement; (d) the status of legislation to be introduced by Assemblyman Fred Keeley to increase the enforceability of the MOU; and (e) typographical errors in the "MOU Regarding Affordable Housing" attached to the MOU as a sidebar agreement between the City of Watsonville and Santa Cruz County. Each of these is discussed individually below.

A. EIR status

Questions were raised at the April 10th hearing about the MOU's statement regarding the CEQA document for the District's proposed high school. The MOU states as follows (see Page 1 of Exhibit 1):

Whereas, the City has accepted a final EIR for the development of a public high school on the [Area C] site; and

The MOU statement is meant to declare a fact. The District certified a final EIR (FEIR) for the proposed high school project on September 9, 1998.² In their LCP amendment submittal, the City indicated that "the City Council hereby concurs and relies on the environmental review of the Project as set forth in the [FEIR]" and the City Council adopted a "Statement of Facts, Findings, and Overriding Considerations" based upon the District's FEIR. The MOU recital regarding the EIR is merely intended to be a statement of fact describing the City's action with respect to the FEIR for a public high school. It does not bind the Commission to accepting the analysis and/or conclusions of the District's FEIR. Nor does it negate the need for further CEQA analysis if otherwise necessary under the requirements of the California Environmental Quality Act.

B. Harkins Slough Interchange Project

Questions were raised at the April 10th hearing about the MOU's requirements vis-à-vis the proposed Harkins Slough Interchange project.³ Specifically, the MOU states (see Page 7 of Exhibit 1):

² The FEIR is the subject of ongoing litigation. In October 1998, Watsonville Wetlands Watch and California Alliance for Resource Conservation filed suit in Santa Cruz County Superior Court alleging that the FEIR failed to acknowledge that the site is located on prime agricultural land and that the project failed to mitigate or change the project as a result of its inconsistencies with the Watsonville LCP and the Coastal Act (Case No.134587). On May 14, 1999 the Court found that the revised EIR complied with CEQA requirements, and that substantial evidence in the record supported the revised EIR's conclusions. Watsonville Wetlands Watch and California Alliance for Resource Conservation appealed the Santa Cruz Superior Court decision to Appellate Court on July 19, 1999. Oral arguments in the matter took place on May 9, 2000. As of the date of this staff report, Staff is unaware of any decisions having been made by the Appellate Court in this matter.

³ Caltrans is currently considering offramp and overpass interchange improvements at Harkins Slough Road and Highway One. Although limited details are available as of the date of this staff report, these improvements at least conceptually include raising the overpass, widening it to 3 lanes, installing an on-ramp on the inland side of the Highway, and installing an off-ramp west of the Highway adjacent to Area C. Based upon the extent of the West Branch of Struve Slough on Area C adjacent to the Highway, it appears that a portion of the west side off-ramp being contemplated would be placed within



8. *HARKINS SLOUGH INTERCHANGE. The City, County and Commission agree to consider the effects of the execution of this Memorandum on limiting growth inducing impacts that might otherwise result from any future City project proposals for improving the Highway 1 Harkins Slough Interchange.*

This MOU statement indicates that the Commission will consider the effect of the MOU when and if the Harkins Slough Road Interchange project ever comes before them. The executed MOU simply would become one of the facts that enter into any Coastal Act/LCP analysis regarding this conceptual project. It will be one of many facts considered in any analysis of this project. However, the MOU statement does not bind the Commission in any way on any decisions that the Commission might eventually make on the proposed Harkins Slough Interchange project.

C. Supermajority Vote Provisions

Questions also were raised at the April 10th hearing about the MOU's supermajority vote provisions. Specifically, for any LCP/General Plan amendments identified in the MOU, the City and County would be required to include a supermajority vote provision. For the City, the MOU states (see Page 5 of Exhibit 1):

4. SUPER MAJORITY VOTE. Any of the amendments to the LCP or General Plan identified in Sections 2 and 3 approved by the City for submission to the Commission as LCP amendments or as amendments to the City's General Plan for areas outside the Coastal Zone West of Highway One shall include a requirement that future amendments to or revocation of these provisions shall require approval by a super majority of the City Council. (Five votes to amend or revoke.)

For the County, the MOU states (see Pages 6 and 7 of Exhibit 1):

6. SUPER-MAJORITY VOTE. Any of the amendments to the LCP or General Plan identified in Section 5 approved by the County for submission to the Commission as LCP amendments or as amendments to the County's General Plan shall include a requirement that future amendments to, or revocation of, these provisions shall require approval by a super majority of the County Board of Supervisors. (Four votes to amend or revoke.)

In general, the MOU states (see Page 7 of Exhibit 1):

9. SUPER-MAJORITY VOTE. A super-majority vote to amend or revoke amendments to the City and County LCP's and General Plans as provided by Sections 3 and 5 of this Memorandum shall be required.

This MOU statement provides that any MOU-required amendments will include policy language (in the General Plan, LUP and IP) requiring a supermajority vote to make any changes to the MOU-required

the slough, other ESHA, and/or within the LCP-required 100-foot slough buffer. Commission staff has commented that this interchange project has not yet been shown to be necessary, may not be the most appropriate solution, and raises serious concerns regarding (1) development in and adjacent to the West Branch of Struve Slough, and (2) the potential for growth inducement and corresponding agricultural conversion west of the Highway at this location. (It should be noted that the District has indicated that the proposed high school does not require the interchange project.)



amendments. These supermajority vote requirements would then become part of the General Plan and LCP. Thus, once such provisions are certified into the respective LCPs, the supermajority vote requirements can only be changed by an LCP amendment submitted by the supermajority vote of the local government and approved by the Commission.

D. MOU-Related Draft Legislation

The MOU describes supporting legislation as follows (see Page 8 of Exhibit 1):

13. LEGISLATION. The City and County shall support legislation relative to this Memorandum that shall permit any person to petition a court of competent jurisdiction to require the City, the County and/or the Commission to comply with the terms of this Memorandum, including any amendments hereto. Such legislation shall not become enforceable until (1) the County and City both have Housing Elements in their respective General Plans certified by the California Department of Housing and Community Development and (2) either the County or City commence any official action to rescind the “supermajority” voting requirements contained herein.

Attached is a copy of the proposed legislation that Assemblyman Keeley’s office is pursuing (see Exhibit 6). A hearing is expected to be set in the near future.

E. Typographical Errors

The Commission noted a few typographical errors in the “MOU Regarding Affordable Housing” attached to the MOU as a sidebar agreement between the City of Watsonville and Santa Cruz County. Those typographical errors have been corrected and replacement pages have been inserted (see pages 10 and 11 of Exhibit 1). The Commission would not be party to this sidebar agreement regarding affordable housing.

4. PVUSD Memo Issues Discussion

Questions posed by the Commission at the April 10, 2000 hearing regarding the School District’s post-March hearing efforts and District Superintendent Casey’s March 31, 2000 memo to the PVUSD Board (Exhibit 2) raised concerns about the consistency of these actions with the Coastal Commission’s direction in LCP amendment 1-99, including issues relating to performing the required aeronautics safety review, understanding the actual project to be pursued at the site, as well as the ability to adjust siting and design of the project once funding allocations are made.

In response to Staff’s initial inquiries regarding the issues raised by Superintendent Casey’s March 31, 2000 memo, Superintendent Casey has indicated that the School District is pursuing a two-phase process with the first phase aimed at securing funding for the District’s proposed high school under the design and strategy outlined in his memo, and the second phase aimed at meeting Watsonville’s LCP requirements as amended by the Commission with suggested modifications. On May 24, 2000, the State Allocation Board authorized funding for the District’s proposal to construct a modified high school on the 30 acres of Area



C nearest Harkins Slough Road. Staff has not yet seen any plans for the proposed modified high school other than the sketches in Superintendent Casey's March 31, 2000 memo (again, see Exhibit 2). Site constraints identified in the Commission's suggested modifications, such as aeronautics and geologic safety, have not yet been identified. The District indicates that these planning constraints will be identified soon, and that the funding is flexible enough as to allow the District to modify the project in light of any to-be-identified aeronautics, geologic, and other constraints on the site. See Superintendent Casey's response to Staff's April 21, 2000 letter attached as Exhibit 4.

5. Staff Recommendation on MOU

The MOU is a part of the Commission's suggested modifications for LCP Amendment 1-99 intended to implement many of the Commission's other suggested modifications in order to add another layer of protection designed to stabilize the urban-rural boundary in south Santa Cruz County and protect agricultural and environmentally sensitive habitat lands west of Highway One. Staff recommends that the Commission approve this MOU and authorize the Executive Director to sign the agreement on behalf of the Coastal Commission.

